

**IN THE COURT OF APPEALS OF IOWA**

No. 8-1046 / 08-0802  
Filed January 22, 2009

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**THOMAS PARKER McDOWELL JR.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Des Moines County, R. David Fahey, Judge.

Thomas Parker McDowell Jr. appeals the sentence entered following a jury verdict finding him guilty of operating while intoxicated, third offense.

**AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Patrick C. Jackson, County Attorney, and Pamela K. Dettmann Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Eisenhauer and Doyle, JJ.

**DOYLE, J.**

Thomas Parker McDowell Jr. appeals the sentence entered following a jury verdict finding him guilty of operating while intoxicated (OWI), third offense, in violation of Iowa Code section 321J.2(1)(a) and 321J.2(2)(c) (2007). McDowell contends the district court abused its discretion in sentencing him to fifteen years and not placing him in the OWI program recommended by the Iowa Department of Correctional Services. Upon our review, we affirm.

***I. Background Facts and Proceedings.***

On July 26, 2006, a Burlington police officer, who knew McDowell's license was not valid, observed McDowell driving a motor vehicle. McDowell was then stopped by the officer and another officer. When the officers approached McDowell, they smelled a strong odor of an alcoholic beverage on McDowell's breath. They observed that his eyes were very watery and bloodshot, and that his speech was very slurred. One of the officers conducted field sobriety tests on McDowell, which McDowell failed. A subsequent preliminary breath test revealed his blood alcohol level was 0.307. The officer confirmed that McDowell's license was revoked, and McDowell was then arrested. The officers learned that McDowell had prior OWI convictions.

McDowell was charged by an amended trial information with OWI, third offense, in violation of Iowa Code section 321J.2(1)(a) and 321J.2(2)(c), and as a habitual offender, in violation of section 902.8. McDowell was also charged with driving while revoked, in violation of section 321.21. A jury trial commenced on January 24, 2008, and he was found guilty on all charges. Following the entry of those verdicts, a colloquy was conducted between the district court and

McDowell. McDowell stipulated to two prior OWI convictions and two prior felony convictions, and the court then requested a presentence investigation.

A presentence investigation was prepared by Iowa Department of Correctional Services (Department). The Department recommended that McDowell:

[B]e committed to the custody of the Director, Division of Adult Corrections, State of Iowa for a period not to exceed five (5) years, with placement in the OWI program through short term incarceration at the Iowa Medical and Classification Center (IMCC) for approximately sixty (60) days followed by placement in a Residential Facility with the Department of Corrections.

On April 3, 2008, the sentencing hearing was held. Among other things, McDowell asked that the district court take into consideration sentencing options it had available and allow him the greatest opportunity to maximize his ability to work and to pay his debts and to do what was necessary to make right what he had to in the case, such as fines, restitution, and court costs. The district court then sentenced McDowell to a term of incarceration not to exceed fifteen years on his OWI, third offense, habitual offender conviction.

McDowell appeals.

## ***II. Scope and Standards of Review.***

Our review is for correction of errors at law. Iowa R. App. P. 6.4; *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). The district court's decision "to impose a particular sentence within the statutory limits is cloaked with a strong presumption in its favor, and will only be overturned for an abuse of discretion or the consideration of inappropriate matters." *Formaro*, 638 N.W.2d at 724.

### **III. Discussion.**

On appeal, McDowell contends the district court abused its discretion in sentencing him to fifteen years and not placing him in the OWI program recommended by the Department.<sup>1</sup> Iowa Rule of Criminal Procedure 2.23(3)(d) requires the district court to state its reasons for selecting a particular sentence on the record. *State v. Oliver*, 588 N.W.2d 412, 414 (Iowa 1998) (citing the rule then numbered 22(3)(d)). The district court should weigh and consider all pertinent matters in determining proper sentence, including the nature of the offense, the attending circumstances, defendant's age, character and propensities and chances of his reform. *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999). The court also must determine which sentence "will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others." Iowa Code § 901.5.

The record reveals at the time of sentencing in the present matter, McDowell had accrued multiple convictions, four of them for OWI. His sentences for the prior offenses had included fines, probation, and incarceration. During the sentencing hearing, the district court noted McDowell had a "decent" employment record at a very difficult job and that it had reviewed the information contained in the presentence investigation report. The report contained information about his work history, his financial responsibility, and his age, and recommended a short term of incarceration followed by a residential OWI program. Although the district court expressed serious concerns regarding the safety of the community and

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<sup>1</sup> McDowell's driving-while-revoked sentence is not at issue in this appeal.

society, the court also remarked on McDowell's continued behavior of driving while intoxicated. The court's reference to the defendant's recidivism demonstrates the court's awareness rehabilitation had not resulted from the sentencing options previously imposed. The district court noted:

I really don't know what to say. You have some really good qualities, but your past record and most particularly the nature of this offense, the multiple times you've committed it really argue in favor of prison time because I don't know how else to deal with this. I mean, I've considered suspending the prison time. I don't think— At this point you've had the benefit of jail time, prison time, probation, parole, fines. You know, the record is just too serious. And that's just an unfortunate reality here.

Contrary to McDowell's assertions, the district court did consider his chance for rehabilitation. After our review of the record, we conclude the district court considered the appropriate factors when sentencing McDowell and did not abuse its discretion by sentencing him to a term of incarceration.

#### ***IV. Conclusion.***

Because we conclude the district court considered the appropriate factors when sentencing McDowell and did not abuse its discretion by sentencing him to a term of incarceration, we affirm the sentence of the district court.

**AFFIRMED.**